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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,699	04/16/2001	Marcy E. Armstrong	19258CC	6277

7590 06/25/2004

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Patent Department
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EXAMINER

MARTINELL, JAMES

ART UNIT	PAPER NUMBER
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1631

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

SM

Office Action Summary

Application No.

09/835,699

Applicant(s)

ARMSTRONG ET AL.

Examiner

James Martinell

Art Unit

1631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-13 is/are allowed.
- 6) ☒ Claim(s) 1-3, 15 and 17 is/are rejected.
- 7) ☒ Claim(s) 4-7, 14, and 16 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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The indicated allowability of claims 1-3, 15, and 17 is withdrawn in view of the reference to Burke (Reviews of Infectious Diseases 13 (Suppl. 11): S906-911 (1991)). A rejection based on this references follows.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Burke (Reviews of Infectious Diseases 13 (Suppl. 11): S906-911 (1991)). The plasmid disclosed in Figure 1 (page S907) has all of the structural features recited in the claims (*e.g.* see the figure legend and the paragraph bridging the columns on page S907).

Claims 4-7, 14, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 8-13 are allowable over the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Martinell whose telephone number is (571) 272-0719. The fax phone number for Examiner Martinell's desktop workstation is (571) 273-0719. The examiner works a flexible schedule and can be reached by phone and voice mail. Alternatively, a request for a return telephone call may be e-mailed to james.martinell@uspto.gov. Since e-mail communications may not be secure, it is suggested that information in such requests be limited to name, phone number, and the best time to return the call.

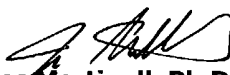
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, can be reached on (571) 272-0722.

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PLEASE NOTE THE NEW FAX NUMBER

The fax phone number for the organization where this application or proceeding is assigned is
(703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should
be directed to the receptionist whose telephone number is (571) 272-1600.


James Martinell, Ph.D.
Primary Examiner
Art Unit 1631 6/22/04